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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/710,412

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Robert L. Bingle

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EXAMINER

GILES, NICHOLAS G

ART UNIT

PAPER NUMBER

2622

NOTIFICATION DATE

DELIVERY MODE

05/07/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@mcgarrybair.com

Office Action Summary	Application No. 10/710,412	Applicant(s) BINGLE ET AL.	
	Examiner NICHOLAS G. GILES	Art Unit 2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-7,9-30,51-55 and 57-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-6,9-30,61 and 62 is/are allowed.
- 6) ☒ Claim(s) 7,51-55,58-60 and 63-65 is/are rejected.
- 7) ☒ Claim(s) 57 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 02/26/2009 have been fully considered but they are not persuasive.

Applicants appear to attempt to traverse of the examiner's Official Notice, arguing that the official notice was improper and that it was not well known to use image signals to determine the type of lighting conditions. **Regarding Examiner's use of Official Notice, Applicant's attempted traversal is inadequate.** "To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would **include stating why the noticed fact is not considered to be common knowledge or well-known in the art.**" See MPEP §2144.03. Because the Applicant has not specifically pointed out the supposed errors in the Examiner's action, including stating why the noticed fact is not considered to be common knowledge or well-known in the art, the Examiner finds the traversal to be inadequate. Applicant's traversal amounts to a mere allegation of patentability over the common knowledge/well-known in the art, to which, the MPEP states, "A general allegation that the claims define a patentable invention ... would be inadequate." Again see MPEP §2144.03. Because the Applicant has not specifically pointed out the supposed errors in the Examiner's action, including stating why the concepts and advantages of using image signals to determine the type of lighting conditions are well known and expected in the art is not considered to be common knowledge or well-known in the art, the Examiner finds the traversal to be inadequate. However in the interest of furthering

prosecution of the application the examiner provides Easwar in the rejection that follows.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims **7, 51-55, 58-60, and 63-65** are rejected under 35 U.S.C. 103(a) as being unpatentable over Noguchi (U.S. Pub. No. 2002/0163586) in view of Easwar (U.S. Pub. No. 2003/0098914).

As stated in MPEP § 2111.02 (please see also *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 – CCPA 1951), if the preamble of the claim neither recites the limitations of the claim nor is necessary to give life, meaning, and vitality to the claim; then the preamble of the claim is not served to further define the structure of the claim. Thus, in regards to claims 63 and 65, the preamble of the claim is not given any patentable weight since the preamble of the claim neither recites the limitations of the claim nor is necessary to give life, meaning, and vitality to the claim.

Regarding claim **63**, Noguchi discloses:

A camera having an image sensor (CCD) for generating an image output representative of an image captured by the image sensor with an associated optical path, a light sensor providing a light sensor output that is indicative of lighting conditions in the vicinity of the camera (¶0026-

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0028, light sensor 26); and an infrared filter associated with the image sensor for attenuating infrared radiation (IR cutting filter 12 ¶0027-0030); wherein, in response to the output from the light sensor, the infrared filter is movable from a first position, wherein the infrared filter is disposed in the optical path of the image sensor for preventing transmission of the infrared radiation to the image sensor, and a second position, wherein the infrared filter is spaced from the optical path of the image sensor and does not prevent transmission of the infrared radiation to the image sensor (¶0027-0028).

Noguchi is silent with regards to the image sensor output being used for the lighting conditions. Easwar discloses this in ¶0053. Easwar discloses in ¶0053 that this is advantageous since additional cost and expense of utilizing an external light sensor can be avoided. For this reason it would have been obvious to one of ordinary skill in the art at the time the invention was made to have Noguchi include the image sensor output being used for the lighting conditions.

Regarding claim 7, see the rejection of claim 63 and note that Noguchi further discloses:

When the light level output is less than a first threshold, the infrared filter is in the first position, and when the light level output is greater than a second threshold, the infrared filter is in the second position (threshold used to determine that sensitivity is insufficient and threshold used to

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determine that sensitivity is sufficient, in this case the thresholds are the same, ¶0027-0028).

Regarding claim **64**, see the rejection of claim 63 and note that Noguchi further discloses:

Gain applied to pixels of an image captured by the image sensor (¶0026, amplification).

Regarding claim **65**, Noguchi discloses:

A camera having an image sensor (CCD) for generating an image output representative of an image captured by the image sensor with an associated optical path and viewing area, a light sensor providing a light sensor output that is indicative of lighting conditions in the viewing area (¶0026-0028, light sensor 26); and an infrared filter associated with the image sensor for selectively attenuating infrared radiation (IR cutting filter 12 ¶0027-0030); wherein the infrared filter is responsive to the image sensor output such that the infrared filter prevents the image sensor from being exposed to infrared radiation when lighting conditions in the viewing area correspond to bright light conditions, and does not prevent the image sensor from being exposed to infrared radiation when the lighting conditions in the viewing area correspond to low light conditions (¶0027-0028).

Noguchi is silent with regards to the image sensor output being used for the lighting conditions. Easwar discloses this in ¶0053. Easwar discloses in ¶0053 that this

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is advantageous since additional cost and expense of utilizing an external light sensor can be avoided. For this reason it would have been obvious to one of ordinary skill in the art at the time the invention was made to have Noguchi include the image sensor output being used for the lighting conditions.

Regarding claim **51**, see the rejection of claim 65 and note that Noguchi further discloses:

Infrared filter is movable from a first position, wherein the infrared filter is disposed in the optical path of the image sensor for preventing transmission of the infrared radiation to the image sensor, and a second position, wherein the infrared filter is spaced from the optical path of the image sensor and does not prevent transmission of the infrared radiation to the image sensor (¶0027-0028).

Regarding claim **52**, see the rejection of claim 51 and note that the movement of the IR filter is covered in the rejection of claim 65.

Regarding claim **53**, see the rejection of claim 52 and note that Noguchi further discloses:

Gain applied to pixels of an image captured by the image sensor using automatic gain control (¶0026, amplification circuit controlled by control circuit).

Regarding claim **54**, see the rejection of claim 52 and note that Noguchi further discloses:

Image sensor output is a value representative of a gain determined by an automatic gain control (§0026, amplification circuit controlled by control circuit and amplifies image signal).

Regarding claim **55**, see the rejection of claim 52 and note that Noguchi further discloses:

When the light condition output is less than a first threshold, the infrared filter is in the first position, and when the light condition output is greater than a second threshold, the infrared filter is in the second position (threshold used to determine that sensitivity is insufficient and threshold used to determine that sensitivity is sufficient, in this case the thresholds are the same, §0027-0028).

Regarding claims **58-60**, see the rejection of claim 51 and note that Noguchi is silent with regards to a supplemental illumination system comprising a light emitting diode and selectively actuable when the imaging system is activated. Official Notice is taken that it was well known at the time the invention was made to have LEDs be used as a flash source for a camera. Such a setup is advantageous in that images can be captured in low light situations using the LED which also uses low power. For this reason it would have been obvious to one of ordinary skill in the art at the time the invention was made to have Noguchi include a supplemental illumination system comprising a light emitting diode and selectively actuable when the imaging system is activated.

Allowable Subject Matter

4. Claims **3-6, 9-30, 61, and 62** are allowed.

Regarding claim **61**, no prior art could be located that teaches or fairly suggests one threshold being greater than the other in combination with the rest of the limitations of the claim.

Regarding claims **3-6 and 9-30**, these claims depend on claim 61 and therefore are allowed.

Regarding claim **62**, no prior art could be located that teaches or fairly suggests one threshold being greater than the other in combination with the rest of the limitations of the claim.

5. Claim **57** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claim **57**, no prior art could be located that teaches or fairly suggests one threshold being twice the other in combination with the rest of the limitations of the claim.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICHOLAS G. GILES whose telephone number is (571)272-2824. The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas G Giles/
Examiner, Art Unit 2622

/Jason Chan/
Supervisory Patent Examiner, Art Unit 2622